



June 26, 2003

Air and Radiation Docket
Environmental Protection Agency
Mailcode: 6102T
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attention: Docket ID NO. OAR 2002 0064

RE: Initial Comments to Protection of Stratospheric Ozone: Listing of Substitutes for Ozone Depleting Substances - n-Propyl bromide: Proposed Rule Federal Register Vol. 68 No. 106, June 3, 2003.

The following are comments regarding the above described Notice of Proposed Rulemaking and we respectfully request that they be entered into Docket ID NO. OAR 2002 0064 and considered in the Final Rulemaking regarding the issues discussed herein.

Enviro Tech International, Inc. is the manufacturer of the **EnSolv** Family of Solvents, which are based on n propyl bromide. Since bringing the first nPB based solvent to the market in 1996, our patented **EnSolv** formulations have provided a necessary and successful replacement for ozone depleting substances such as CFC-113, methyl chloroform and HCFC-141b for vapor degreasing, ultrasonic and other precision cleaning applications. Enviro Tech supports the EPA decision to list n propyl bromide as approved. Considering that n propyl bromide has been under SNAP review for nearly eight years while being subjected to a level of scrutiny unprecedented in the SNAP program, we expect that this proposal will proceed with all due speed to a final rule making.

Although we support the ultimate proposal to list n propyl bromide as acceptable, the Notice of Proposed Rulemaking has raised a number of issues which Enviro Tech will address in detail at a later time. However, because of the high level of confusion the Notice already caused in the marketplace, we feel it is necessary to make these initial preliminary comments.

First, EPA is well aware (and even representatives of competing products agree) that users often compare AELs as a safety benchmark. EPA readily admits it used a methodology vastly different from that of OSHA in order to derive an AEL. EPA offers no reasoning as to why a different methodology is necessary or advisable, and offers no direction or guidance on how a recommendation based on yet another entirely different set of criteria might have any benefit in the real world of the workplace.

As we have said, EPA recommends an AEL based on methods and criteria which have not been used to make any other similar recommendation. Therefore, unless EPA is publishing a new standard of review of chemical compounds under SNAP, its process is violative of equal protection. If EPA is indeed announcing a new standard of review, it is then to be assumed that all subsequent SNAP reviews, such as is currently underway for HCFC-225ca/cb, will apply this same standard. It is also then correct to assume that any subsequent review of compounds such as trichloroethylene, perchloroethylene, 1,2 trans-dichloroethylene or other *trans* based mixtures, etc. pursuant to 42 USC 7671k(d) will also be subject to this same standard. If this is EPA's intent, it should state this in no uncertain terms.

Next, we are concerned that EPA did not even acknowledge the existence of the expert assessments and reports listed below, all of which are critical of ICF Consulting's report, even though they were in the EPA's docket A-2001-07 before, at or around the same time as the reviews by Drs. Brock and Dodd which EPA cites for as support. Since no mention of any of the following reports, reviews and assessments are mentioned in the Notice of Proposed Rulemaking, we will be submitting them with additional commentary as part of the Public Comments to the Notice of Proposed Rulemaking:

- 1) **August 24, 2001** Letter from Dr. John Doull and Dr. Karl Rozman stating the use of results from the 2nd generation of a two generation study are not relevant to an occupational exposure level. A-2001-07 Doc. #II-D-26 and attachment to II-D-41.
- 2) **May 31, 2002.** Letter from Dr. John Doull and Dr. Karl Rozman criticizing ICF Consulting's derivation of an occupational exposure limit for nPB. A-2001-07 Attachment to Doc. #II-D-41.
- 3) **May 29, 2002.** Dr., Marc Stelljes, SLR International, Inc. Memo criticizing ICF Consulting's derivation of an occupational exposure limit for nPB. A-2001-07 Attachment to Doc. #II-D-41-4.
- 4) **August 21, 2002.** Dr. F. Jay Murray, Murray & Associates. Letter regarding inappropriate use of F1 generation endpoints for derivation of AEL. A-2001-07 Doc. #II-D-58
- 5) **October 21, 2002.** Dr. Joseph Rodricks. Letter criticizing ICF Consulting's derivation of an occupational exposure limit for nPB. A-2001-07 Doc. #II-D-65

For comparison, reports cited by EPA were Dr. Dodd's assessment is dated July 17, 2002, Dr. Brock's assessment dated July 19, 2002 and the California HESIS assessment dated September 27, 2002. II-D-62.

Further, EPA fails to discuss positive data regarding the ozone depletion potential of nPB included in the reports it does cite. As EPA well knows, the MOZART 3D model used to compute the ODP of 0.013 - 0.018 for nPB was incomplete at the time of testing and the resulting ODP's were "likely still too large." Since then, additional work has been done on the model and it is expected that an analysis of nPB under the more complete MOZART 3D model will result in a lower ODP for nPB at all latitudes, including equatorial regions. In fact, as Dr.

Wuebbles points out, 7553 tons of nPB (the estimated world nPB production for 2002) emitted across North American, European and Asian latitudes would result in ozone depletion that is too small to be measured. Additionally, Dr. Wuebbles explains that “[o]nly in the case that all emissions occur in the equatorial region would the resulting effects on ozone be larger.” Wuebbles, Donald J. 2002. *The Effect of Short Atmospheric Lifetimes on Stratospheric Ozone* A-2001-07 Doc. # II-D-29. This information is also extremely relevant to other interested parties

Further, it is exasperating that EPA equivocates on the issue of flammability. Calling this characteristic of nPB into question also calls into question the flammability of all other halogenated compounds (including methylene chloride, trichloroethylene as well as HFE and HCFC-4310mee mixtures with 1,2, trans dichloroethylene) because they all share similar characteristics. By raising this issue, EPA questions the very definition and understanding of the term “flammable” into question and in doing so, demonstrates a remarkable lack of expertise in this area.

Finally, although some commenters may expound pet theories as to supposed EPA “obligations”, it is axiomatic that an agency has literally no power to act unless Congress confers that power upon it. *Louisiana Pub. Serv. Comm. v. FCC*, 476 U.S. 355, 374 (1986); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). As the Federal Courts have repeatedly made clear, it is not within EPA’s prerogative to disregard statutory limitations on its discretion because it concludes that other remedies it has created out of whole cloth are better. *Whitman v American Trucking Assoc.* 531 US 457(2001); *Ethyl Corp. v. USEPA*, 51 F.3d 1053 (D.C. Cir.1995); *Sierra Club and Missouri Coalition for the Environment v. USEPA*, 311 F.3d 853 (7th Cir. 2002).

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